

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LUIS CERVANTES,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, *et al.*,

Defendants.

Case No. 2:17-cv-00562-MMD-NJK

ORDER

I. SUMMARY

On February 23, 2023, this Court ordered Plaintiff Luis Cervantes to file a notice no later than March 27, 2023 stating whether he has retained new counsel or intends to proceed *pro se*. (ECF No. 167.) That deadline has now long expired, and Plaintiff has not responded to the order or otherwise indicated an intent to prosecute this action. Before the Court is Defendants'¹ motion to dismiss this action based on Plaintiff's failure to prosecute. (ECF No. 168 ("Motion").) Plaintiff had until April 27, 2023 to respond to the Motion. To date, no response has been filed. As further explained below, the Court grants the Motion as unopposed under Local Rule ("LR") 7-2(d) and based on Plaintiff's failure to comply with the Court's order and lack of prosecution.

II. DISCUSSION

First, LR 7-2(d) provides that "[t]he failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the motion." Because

¹The remaining Defendants are Timothy Dorion, Kevin Patimeteeporn, and Eddie Scott.

1 Plaintiff has failed to respond to the Motion, he is deemed to have consented to the
2 granting of the Motion.

3 Second, district courts have the inherent power to control their dockets, and “[i]n
4 the exercise of that power, they may impose sanctions including, where appropriate . . .
5 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
6 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an
7 action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v.*
8 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
9 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply
10 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41
11 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
12 keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
13 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d
14 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with
15 local rules).

16 In determining whether to dismiss an action for lack of prosecution, failure to obey
17 a court order, or failure to comply with local rules, the court must consider several factors:
18 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
19 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
20 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
21 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
22 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

23 Here, the Court finds that the first two factors, the public’s interest in expeditiously
24 resolving this litigation and the Court’s interest in managing the docket, weigh in favor of
25 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
26 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
27 in prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).
28

1 The fourth factor—the public policy favoring disposition of cases on their merits—is
2 greatly outweighed by the factors in favor of dismissal discussed herein.

3 Finally, the fifth factor requires the Court to consider whether less drastic
4 alternatives can be used to correct the party's failure that brought about the Court's need
5 to consider dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999).
6 Courts "need not exhaust every sanction short of dismissal before finally dismissing a
7 case, but must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779
8 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
9 unless Plaintiff indicates an intent to continue prosecuting and participating in this action,
10 the only alternative is to enter a second order setting another deadline. But the reality of
11 repeating an ignored order is that it often only delays the inevitable and squanders the
12 Court's finite resources. The circumstances here do not indicate that this case will be an
13 exception: there is no hint that Plaintiff needs additional time or evidence that he did not
14 receive the Court's order. Setting another deadline is not a meaningful alternative given
15 these circumstances. So the fifth factor favors dismissal.

16 Having thoroughly considered these dismissal factors, the Court finds that they
17 weigh in favor of dismissal.


18 **III. CONCLUSION**

19 It is therefore ordered that Defendants' motion to dismiss (ECF No. 168) based on
20 Plaintiff's failure to prosecute is granted.

21 It is further ordered that this action is dismissed without prejudice.

22 The Clerk of Court is directed to enter judgment accordingly and close this case.

23 DATED THIS 1st Day of May 2023.

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25 _____
26 MIRANDA M. DU
27 CHIEF UNITED STATES DISTRICT JUDGE
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